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DIGEST OF DECISIONS  
OF THE  
JUDGE ADVOCATE,  
DEPARTMENT OF CALIFORNIA

G. A. R.



APPROVED BY THE FIFTEENTH AND SIXTEENTH  
ANNUAL ENCAMPMENTS.



CHARLES E. WILSON

JUDGE ADVOCATE.

1884



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## REPORT OF THE JUDGE ADVOCATE.

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HEAD QUARTERS DEPARTMENT OF CALIFORNIA,  
GRAND ARMY OF THE REPUBLIC,  
OFFICE OF JUDGE ADVOCATE,  
420 CALIFORNIA ST., SAN FRANCISCO, Jan. 23d, 1884.

HORACE WILSON, A. A. G.

Comrade : I have the honor to submit the following report of the business of this office for the current term.

A variety of questions have been submitted for my consideration by the Department Commander, and in every case the decision of this office has been reduced to writing and preserved.

In accordance with the suggestions contained in the Judge Advocate's report of 1882, and adopted by the Department Encampment, a digest of all decisions rendered by me during the term, is hereto appended and made a part of this report.

Early in the term my opinion was asked concerning the relationship to the G. A. R. of a comrade holding a transfer card. My conclusions were in substance, and I so advised, that a comrade who applies for and receives a transfer card, virtually severs his connection with the Order, until he is re-admitted to the Post granting the card or to some other Post, within one year from the date of his card; that in consideration of his having been a member of the Order, discrimination is made in his favor as against a stranger, in that he may be re-admitted to the Post granting the card by a two-thirds vote, or to another Post within the same period of time and by the same vote, after his application has been referred to a committee of investigation and a favorable report had. To offset this advantage, and to protect other Posts from imposition, he remains during the year *for the purpose of discipline only*, under the jurisdiction of the Post granting the card. That in my judgment no person is entitled to sit in a Post meeting unless he is a member of a Post, and that a com-

rade who has applied for and received a transfer card, is neither a member of a Post, nor of the Order, until he has been re-admitted under the provisions of the rules and regulations governing such cases.

Recently my attention has been called to the report of the proceedings of the last National Encampment, pages 142, 143, 166, 167, from which it appears that the Judge Advocate General decides, that a comrade who has applied for and received a transfer card, may hold office in the Department Encampment, and this decision, after a lengthy debate, although strenuously opposed by many comrades, was affirmed by the National Encampment.

I presume no one will for a moment contend that a person can hold office in the Grand Army of the Republic unless he be a member of the Order in good standing; and hence I understand the decision of the Judge Advocate General to mean that a comrade holding a transfer card is a member of the G. A. R. in good standing, and consequently entitled to all the rights and privileges of the Order, including the right to sit in Post meetings. Independently of this decision, I find myself unable by any process of reasoning to reach a like conclusion. Nevertheless, it is the law of the Order, and I have therefore omitted mention of my opinion in the digest annexed hereto.

In my former report I took occasion to call attention to the importance of a careful examination of the Rules and Regulations in connection with the preparation of Post by-laws.

The suggestion seems to have had the desired effect, as by-laws submitted for approval during the current term, have as a general thing, given evidence of careful preparation and intelligent understanding of the provisions of the Rules and Regulations.

I am thus encouraged to call attention to some kindred matters, in the hope that like good results may follow.

I refer particularly to the matter of discipline involving Courts-Martial and Court-Martial proceedings.

In the majority of cases referred to the Department Commander during my official career, that officer has been obliged to disapprove the proceedings, findings and sentence, and generally for the reason that there has been no proper charge preferred against the accused upon which to base Court-Martial proceedings.



The offences cognizable by the Grand Army of the Republic are enumerated in Article VI. Chapter V. Rules and Regulations 1882. They number five. They are stated in plain, clear and concise language, and are sufficiently broad to cover all cases of wrong-doing by a comrade in his relationship to the G. A. R.

In many cases it would seem that neither the party preferring the charges, the Court, the accused, nor any person interested has taken the trouble to look at the Rules and Regulations under which action is assumed to be taken.

The charge is the basis of Court-Martial proceedings, and although the specifications may state facts sufficient to constitute an offense cognizable by the G. A. R., and the evidence may show the accused to have committed the acts complained of, yet he cannot be called to account unless he is charged substantially in the language of the Rules and Regulations. There are reasons too numerous to mention here, why no departure from this rule can be allowed.

It also occurs to me, to make a suggestion or two in regard to correspondence. Correspondence must follow military usage. (Manual 1881, page 38.) Comrades will address Post Adjutants, Post Commanders the Assistant Adjutant General of the Department, and all staff officers other than the Assistant Adjutant General will address the Chief of Staff.

This I understand to be military usage, and it is a peculiarly distinctive feature of our organization, and one which in my opinion should be carefully preserved.

Even in cases of appeal from the action of a Post, it is not unusual in this Department for the appellant to send his papers direct to the Assistant Adjutant General or Department Commander instead of transmitting them through the regular channel by way of his Post. A moment's reflection will make it appear that this practice is not according to military usage, and is not courteous to the Post.

In this connection I would further say that communications are frequently sent directly to the Judge Advocate by Post officers and other comrades, submitting for his decision questions arising in the course of the transaction of Post business, or perhaps in the mind of the writer.

In all such cases, I have returned the communication to the author with the suggestion that it should be forwarded through the proper channel.

This has been done, not with a view to shirk labor or responsibility, nor from a lack of courtesy to the author, but from a desire to conform to what I conceive to be military usage. Moreover, the necessity of uniformity in the decisions emanating from this office, as well as proper respect to the Department Commander, precludes the Judge Advocate from rendering opinions except through the proper channel.

I have the honor to be

Yours in F., C. and L.,

CHARLES E. WILSON,  
*Judge Advocate.*

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## DIGEST OF DECISIONS.

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### APPLICATIONS FOR MEMBERSHIP.

#### WITHDRAWAL—BALLOTING.

1—After an application has been received by the Post and referred to a Committee of Investigation, it cannot be withdrawn, except by consent of the Post.—Opinion XI, August 1, 1882.

2—A ballot being had upon the application of a candidate for membership, *and the result declared*, the Post Commander cannot order a second ballot. The Commander being expressly authorized by the provisions of Sec. 4, Art. II, Chap. II, Rules and Regulations, 1881, to order a second ballot in his discretion *before declaring the vote*, is, by the same law, prohibited from doing so after he has declared the result.—Opinion XVI, January 11, 1883.

3—Under the provisions of Sec. 4, Art. II, Chap. II, Rules and Regulations, 1881, in a ballot upon the application of a candidate for membership, *two* black balls reject in a total vote of

39 or less; *three*, when the total vote exceeds 39, and is less than 60, and so on.—*Id.*

## APPEAL.

### NOTICE OF; WHAT IT SHOULD CONTAIN.

1—In order that the reviewing officer may have his attention directed to the particular error relied upon, and consider and decide the questions intended to be raised, the notice of appeal should be specific.—*Opinion XVII, March 28, 1883.*

2—If it is claimed that the action of a Post conflicts with, or is in derogation of any law, rule or regulation, the notice of appeal should state something more than the claim of error in general terms—it should specify clearly how and in what respect the law has been disregarded or violated.—*Id.*

## BY-LAWS.

### CONSTRUCTION OF—CONFLICT.

1—Where a Post has by its by-laws set apart a fund for the purposes of relief as required by the Rules and Regulations, and in the same by-laws provides that “no disbursement shall be made from the general fund of the Post, unless for the actual necessary and legitimate expenses of the Post in the proper conduct of its business for the relief of distressed comrades or for the families of comrades deceased:” in view of the provision for a relief fund, and of the fact that there is business to be transacted and work to be done by the Post, requiring the use of money other than that of relieving the distressed, it will not be presumed that the Post intended by the passage of the by-law quoted, to restrict the use of the general fund to the relief of comrades or other persons in distress.—*Opinion XVII, March 28, 1883.*

2—A Post by-law which provides that “no disbursements shall be made from the general fund of the Post, unless for actual, necessary and legitimate expenses of the Post in the proper conduct of its business for the relief of distressed comrades or for the families of comrades deceased,” does not restrict the use of the general fund to the purposes of relief. Under said by-law

the general fund may be applied to the payment of the necessary expenses of the Post in the conduct of its business, and also to the purposes of relief.—Id.

3—A Post by-law which restricts the use of the general fund to the purposes of relief, and the payment of the actual, necessary and legitimate expenses of the Post, but does not declare what shall be considered as such expenses, leaves that question open to be determined primarily by the Post when demands come before it for payment. The Post by voting to pay the demand virtually decides that it is for actual, necessary and legitimate expenses of the Post in the conduct of its business.

In such case it is not good policy on the part of the Department Commander, nor is it within his province to disturb the judgment of the Post, unless it clearly appears that by some unfair means the vote of the Post has been obtained to appropriate the funds to objects inimical or entirely foreign to the G. A. R.—Id.

4—A Post by-law requiring dues (*per capita tax*) to be paid monthly in advance, conflicts with Sec. 3, Art. III, Chapter V, R. & R., 1882.—Opinion XXIV, July 5, 1883.

5.—A Post by-law which provides that “if any officer is absent from three consecutive meetings, he shall forfeit his office, is in conflict with Art. IV, Chap. V, R. & R.—Opinion XVII, August 2, 1883. Opinion XXIX, December 11, 1883.

6—By-Laws, which are mere re-enactments of the Rules and Regulations, should not be approved.—Opinion I, March 16, 1882.

7—A By-Law which provides that charges shall be preferred against a Comrade under certain circumstances, without making it the duty of any one to prefer such charges, is inoperative. This subject is governed by the Rules and Regulations.—Id. Also, Opinion VI, May 11, 1882.

8—“Suspension from membership,” is a penalty which may be imposed by Court-Martial upon conviction of one or more of the offenses enumerated in Art. VI, Chap. V, Rules and Regulations, 1881, and it cannot be imposed by the Post in punishment of an offense cognizable by the G. A. R., except through the me-

dium of a Court-Martial.—Opinion III, April 25, 1882; Opinion VI, May 11, 1882.

9—A By-Law providing that the Post Commander may suspend from membership a Comrade who appears upon a public parade of the Post drunk and disorderly, is in conflict with Art. VI, Chap. V, Rules and Regulations, 1881; in that, the offense named is one cognizable by the G. A. R., and the provisions of the Rules and Regulations referred to, secure to every Comrade charged with such offense, the right to a trial by Court-Martial, which right cannot be taken away or abridged by the Post.—Id. *Also*, Opinion VII, June 12, 1882.

10—Posts cannot by a By-Law substitute another and different penalty than that prescribed by the Rules and Regulations for an offense cognizable by the G. A. R.—Opinion VII, June 12, 1882.

11—Art. XII, Chap. 5, Rules and Regulations, 1881, requires Posts to establish a Relief Fund, and this should be provided for in the By-Laws.—Opinion VI, May 11, 1882.

12—A By-Law requiring the payment of the *per capita tax* (dues) *monthly*, conflicts with the provisions of Sec. 3, Art. III, Chap. V, Rules and Regulations, 1881.—Opinion IX, June 13, 1882; Opinion XII, August 28, 1882.

13—A By-Law providing that if an elective officer is absent from three consecutive regular meetings of the Post, without a valid and satisfactory excuse, his office shall be declared vacant, is in conflict with the provisions of Art. VI, Chap. V, Rules and Regulations, 1881, in that the penalty of “degradation from office” can be imposed only after due trial and conviction by Court-Martial, under said Rules and Regulations. A Post cannot by a By-Law provide for the forfeiture of office. (*Manual*, 1881, page 3.)—Opinion XIV, October 28, 1882.

## COURT MARTIAL.

### CHARGES.

1—“Intoxication at funeral services,” is not an offense cognizable by the G. A. R., under Art. VI, Chap. V, R & R., and

hence a Court Martial has no jurisdiction to try a comrade or to pronounce judgment or sentence on such a charge.—Opinion XXIII, May 24, 1883.

2—“Conduct unbecoming an officer and a gentleman,” is not an offense cognizable by the G. A. R. under Art. VI, Chap. V, R. & R., and hence a Court Martial has no jurisdiction to try a comrade upon such a charge.—Opinion XXXI, December 11, 1883.

3—Proceedings of a Post Court-Martial, in cases where the sentence is other than dishonorable discharge or dismissal, need not be referred to the Department Commander. (*Rules and Regulations*, 1881; *Sec. 6, Art. VI, Chap. V.*)—Opinion X, July 5, 1882.

4—Before a Court-Martial can proceed to try the accused in his absence, it must conclusively appear that he has been served with notice of the time and place at which the Court will sit for trial, a copy of the charges and specifications, and a list of the members of the Court, at least ten days before the day of trial. (*Rules and Regulations*, 1881; *Sec. 4, Art. VI, Chap. V*; also *Manual* 1881, page 33.)—*Id.* Also, Opinion XIII, September 25, 1882.

5—The statement of the Judge Advocate, that he had mailed the notice, together with a copy of the charges and specifications, and a list of the members of the Court to a third person with the request that such person deliver them to the accused, without proof that the same were delivered to the accused, or left at his usual place of abode, is not a sufficient showing of service of notice, etc., to give the Court jurisdiction to try the accused in his absence.—*Id.*

6—Courts-Martial can obtain jurisdiction of the person of the accused only by his appearance in person, or by attorney, or by the service upon him of the notice, etc., as required by the Rules and Regulations and Manual; and the record must clearly show that jurisdiction was obtained, otherwise the proceedings, findings and sentence, must be disapproved.—*Id.*

7—Art. VI, Chap. V, Rules and Regulations of 1882, is the

supreme law of the Order upon the subject of Courts-Martial. Posts derive the power to create the Court, and the Court acquires jurisdiction, if at all, under this Article of the Rules and Regulations. Before a Comrade can be put upon trial by Court-Martial, he must be charged with one or more of the offenses mentioned in the Rules and Regulations, as cognizable by the G. A. R.—Id.

8.—The “charge” is the basis of the proceedings—the specifications, a recital of the facts constituting the offense, and although the specifications recite facts sufficient to support an accusation of an offense cognizable by the G. A. R., yet if the offense is not specifically charged, there is nothing upon which to predicate a judgment, or findings and sentence. “Conduct unbecoming a member of the Grand Army of the Republic,” is not an offense known to the laws of the Order, and hence a Court-Martial has no jurisdiction to try a Comrade on such a charge.—Opinion XV, November 18, 1882.

## CONTROVERSIES IN A POST.

### INVESTIGATION OF—AUTHORITY OF DEPARTMENT COMMANDER.

1.—When charges of irregularity in the administration of Post affairs are brought to the attention of the Department Commander, he may in his discretion appoint a committee to investigate and report upon such charges.—Opinion XXVIII, Oct. 1, 1883.

2.—In such case, allegations attacking the report of the Committee on the ground that certain members were prejudiced and had formed and expressed opinions as to the merits of the controversy prior to the investigation, must be specific as to names and dates, to deserve notice by the Department Commander.—Id.

3.—If the report of such Committee is attacked on the ground that it misstates or suppresses the evidence taken before the Committee, the attacking party should show in what particulars the evidence is misstated or suppressed.—Id.

4.—A Committee appointed by the Department Commander to investigate matters in controversy, unless especially instructed, may conduct the proceedings in such manner as will, in the judg-

ment of the Committee, best subserve the ends of justice and the good of the Order, and the fact that witnesses appearing before the Committee were examined separate and apart from each other, and without the presence of the parties immediately concerned in the controversy, does not of itself furnish sufficient reason for setting aside or disregarding the report by the Department Commander. It might be otherwise, however, should it appear that the evidence would have been materially different under another mode of procedure.—Id.

### DUES.

#### ARREARAGES—WHEN DELINQUENCY OCCURS—SUSPENSIONS.

1.—Sec. 3, Art. III, Chap. V, R. & R. 1882, provides that each Post, either by its by-laws or a vote of the Post at the last meeting in December, may assess a *per capita tax* (commonly known as dues) upon its members payable in equal quarterly installments on the first days of January, April, July and October.

This provision of the R. & R. does not exact payment in advance, and it is a general rule that money obligations are never payable in advance, except by express stipulation, and hence dues do not accrue to the Post until the end of the quarter.—Opinion XXXIV, Jan. 16, 1884.

2.—Under the Rules and Regulations, a Comrade must owe six months accrued dues before he can be said to be in arrears for six months in the payment of his dues, and before the R. & R. can be invoked to prohibit him from voting, any by-law of the Post to the contrary notwithstanding—Id.

3.—Under the provisions of Sec. 3, Art. IV, Chap. V, R & R, a comrade who is six months in arrears in the payment of his dues, is not entitled to vote at an election of Post officers, and no action on the part of the Post or of the Post Commander is required to place him under the ban of suspension. Nor does the failure of the Quartermaster to report him to the Post as delinquent affect his standing. His suspension occurs by operation of law.—Id.

4.—Sec. 3, Art. III, Chap. V, R. & R., 1882, provides that



each Post may assess a *per capita* tax payable in equal quarterly installments on the first Monday in January, etc. Sec. 1, Art. II, Chap. V, requires the Post Commander to make quarterly returns to the Assistant Adjutant General of the Department on the first days of January, etc. One year's arrearages in dues must necessarily accrue at the beginning of a regular quarter, and the comrade so in arrears ceases to be a member of the G. A. R., and should be reported by the Post Commander in his quarterly report as dropped from the roll for non-payment of dues. No other action on the part of the Post or Post Commander is necessary in the premises.—Opinion XXV, July 16, 1883.

5—The failure of the Post Commander to report a comrade one year in arrears in the payment of his dues as dropped from the roll, etc., does not affect such comrade's relationship to the G. A. R.—he ceases to be a member by operation of law, and cannot be restored to good standing by the simple payment of arrearages of dues, or in any manner except by re-instatement under Sec. 4, Art. IV, Chap. V, R. & R.—Id.

6—Section 5, Art. IV, Chap. V, R. & R., 1882, states that the provisions of Sections 3 and 4 of said Article (relating to suspensions, etc., for the non-payment of dues), shall not apply to comrades in the service of the United States at a distance from the Post of which he is a member; there being no other law upon the subject, it would seem that a comrade cannot be suspended or dropped while so in the service of the United States and on duty at a distance from his Post, and these conditions may continue indefinitely.—Id.

7—The law does not remit the dues of a comrade in the service of the United States at a distance from his Post. It merely extends the time of payment until he is relieved from such duty. The reason for this indulgence would seem to be that it is generally inconvenient, and often impossible, owing to the "exigencies of the service," for a comrade so circumstanced to make remittances to his Post. When he returns to his Post, or to the vicinity thereof, the reason for discrimination in his favor fails, and it is then incumbent upon him to pay the dues which have

accrued during his absence; failing in this he is to be dealt with precisely as other comrades are dealt with under the provisions so Sections 3 and 4, Art. IV, Chap. V, R. & R.—Id.

## EXPENSES OF A POST.

### WHAT ARE NECESSARY AND LEGITIMATE.

1—The entertainment of the members of the Department Encampment, meeting at San Francisco, by the several Posts of that city might reasonably have been expected to tend “to preserve and strengthen those kind and fraternal feelings which bind together the soldiers, sailors and marines who united to suppress the rebellion.” This is first in numerical order of the declared objects of the G. A. R., and hence is directly in the line of duty. A reasonable expenditure of money for such purpose comes within the category of actual, necessary and legitimate expenses of a Post in the proper conduct of its business.—Opinion XVII, March 28, 1883.

## ELECTION OF OFFICERS.

### POWER TO SET ASIDE—FRAUD—ILLEGAL VOTES, EFFECT OF.

1—In case an election for Post officers is held at the meeting designated for that purpose by the Rules and Regulations, and the successful candidates are declared elected without objection, the Post has no power to set aside the election or proceed to hold another.—Opinion XXXIV, January 16, 1884.

2—In case fraud or irregularity in an election for Post officers is discovered after the result is declared, the proper practice is to present the facts to the Department Commander through the proper channel for his action.—Id.

3—The power to set aside an election for Post officers, and order a new election is vested in the Department Commander, subject only to an appeal to the Commander-in-Chief.—Id., also opinion XXIII, October 1, 1883.

4.—If charges of fraud in the election of Post officers are preferred at a Post meeting, it is error on the part of the Post Commander to entertain a motion to refer the charges to a commit-

tee of investigation. He should forward the charges to the Assistant Adjutant General.—Opinion XXXIV, January 16, 1884.

5.—In case it is charged that illegal votes were cast at an election for Post officers, the questions to be determined are, 1st, were illegal votes cast; and 2d, if illegal votes were cast, how was the result of the election affected thereby.—Id.

6.—The ballot for Post officers is a secret ballot, and in case illegal votes are cast, it is neither practicable nor good policy to inquire as to which candidate received the illegal votes.—Id.

7.—If it appears to the Department Commander that illegal votes were cast at an election for Post Commander, and that after deducting said illegal votes from the vote of the successful candidate he still retains a majority of the votes cast, the election should be affirmed, otherwise it should be set aside.—Id.

## OFFICERS.

### REMOVAL OF—FORFEITURE OF OFFICE.

1.—The removal of an elective officer of a Post for cause, is a “degradation from office” within the meaning of Sec. 2, Art. VI, Chap. V, Rules and Regulations, 1881.—Opinion XIV, October 28, 1882.

2.—The penalty of “degradation from office” is a punishment which may be imposed *only* after due trial and conviction by Court-Martial.—Id.

3.—An officer of a Post, duly elected and installed, cannot forfeit his right to the office, except by commission of one or more of the offenses cognizable by the G. A. R., under the Rules and Regulations, and a Post cannot by By-Laws provide for the forfeiture of office. (*See Opinion of Judge Advocate, Gen'l Manual, 1881, page 33.*)—Id.

### REPRESENTATIVES TO DEPARTMENT ENCAMPMENTS.

1.—In case a Post Commander is elected a representative to the Department Encampment, and is present at the meeting of the Encampment *as Post Commander*, he cannot be considered absent as a representative so as to entitle an alternate to act in his stead. The Post should have looked out for its representa-

tion by electing a Comrade as representative not otherwise entitled to a seat in the Encampment.—Opinion XXXIII, Dec. 27, 1883.

2.—In case the Post Commander is present at the meeting of the Department Encampment, either as Post Commander or representative, he cannot be considered absent so as to entitle the S. V. C. or J. V. C. to represent the Post under Sec. 2, Art. II, Chap. II, R. & R.—Id.

3.—If a Post elects the Post Commander a representative to the Department Encampment, and he is present at the Encampment meeting, and acting either as P. C. or representative, the Post is necessarily deprived of a vote which it might have had by the election of a Comrade other than the P. C.—Id.

## SPECIAL MEETINGS.

### REPORT OF INVESTIGATING COMMITTEE AND BALLOTING.

1.—Sec. 3, Art. II, Chap. II, R. & R. 1882, provides that applications for membership shall be presented at a stated meeting of the Post and referred to a committee of investigation, and the following section provides that the committee shall report at a meeting subsequent to their appointment.

Sec. 1, Art. V, Chap. II, R. & R. provides for holding stated meetings, and Section 2 of the same Article makes provision for special meetings, so that both stated and special meetings are recognized by the R. & R.

The law does not either in express terms, or by implication, confine the report of the committee or the ballot for the candidate to a stated meeting, and it follows that the report of the committee may be received, and a ballot upon the application may be had at a special meeting legally convened.—Opinion XXI, April 14, 1883.

## TRANSFER CARD.

1.—A Past Post Commander does not lose his rank so long as he remains in good standing in the G. A. R., and hence his rank is not affected by transfer from one Post to another in the same Department.—Opinion XXIII, Dec. 27, 1883.



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